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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Missing persons*

Report of the Secretary-General

Summary

In its resolution 59/189, the General Assembly requested the Secretary-General to bring the resolution to the attention of all Governments, the competent United Nations bodies, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations and to submit a comprehensive report on the implementation of the resolution to the General Assembly at its sixty-first session.

In response to a note verbale dated 15 May 2006, information was received from the Governments of Azerbaijan, Colombia, Croatia, Cyprus, Guatemala, Jordan, Mauritius, Mexico, Tunisia and Venezuela (Bolivarian Republic of). Information was also received from the International Committee of the Red Cross. The present report, which was prepared in accordance with resolution 59/189, contains a summary of the replies received.

* This report was submitted after the deadline in order to reflect the most up-to-date information possible.

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Contents

I. Introduction ....

II. Replies received from Governments ....

III. Reply received from the International Committee of the Red Cross ....

Page
3
3
7

I. Introduction

1. The General Assembly, in its resolution 59/189 noted that the issue of persons reported missing in connection with international armed conflict, in particular those who are victims of serious violations of international humanitarian law, continues to have a negative impact on efforts to put an end to those conflicts and urged States strictly to observe, respect and ensure respect for the rules of international humanitarian law, as set out in the Geneva Conventions of 12 August 1949 and in the Additional Protocols thereto, of 1977.

2. The Assembly called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict, to account for persons reported missing as a result of such a situation and to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with the armed conflict. It also reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts and the duty of each party to an armed conflict, as soon as circumstances permit it and, at the latest, from the end of active hostilities, to search for the persons who have been reported missing by an adverse party.

3. The Assembly also requested States to pay the utmost attention to cases of children reported missing in connection with armed conflict and to take appropriate measures to search for and identify those children. It also invited States which are parties to an armed conflict to cooperate fully with the International Committee of the Red Cross (ICRC) in establishing the fate of missing persons and to adopt a comprehensive approach to that issue, including all practical and coordination mechanisms that might be necessary, based on humanitarian considerations only.

4. The Secretary-General was requested to submit a report on the implementation of resolution 59/189 to the Assembly at its sixty-first session. The present document is submitted in accordance with that request.

II. Replies received from Governments

Azerbaijan

5. The Government of Azerbaijan stated that the issue of missing persons resulting from the conflict with Armenia was a purely humanitarian matter and that the humanitarian aspect should prevail over political considerations. The State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons was dealing directly with the search for missing persons and hostages as well as seeking their release. It regularly collected and analysed relevant information and established a special comprehensive database on missing persons. The State Commission had also established close contacts with relevant international organizations, especially ICRC and the International Working Group to Search for the Missing, Hostages and Prisoners of War, which comprised human rights activists from Germany, the Russian Federation and Georgia.

6. The Government reported that significant numbers of missing persons were civilians who had not participated in military combat operations and that special

attention should be paid to children, women and the elderly. The Government did not limit its efforts to citizens of Azerbaijan, but respected the rules of international humanitarian law in the search for all missing persons of Armenian origin as well.

Colombia

7. The Government of Colombia referred to the adoption of Act No. 589 of 6 July 2000 which recognizes the offences of genocide, enforced disappearance, forced displacement and torture. The Act provides for important criminal policy measures for dealing with the crime of enforced disappearance, including the establishment of the Commission on the Search for Disappeared Persons, the establishment of the National Register of Disappeared Persons and the Urgent Search Mechanism, as well as the promulgation of measures relating to the administration of property belonging to victims of that crime. The Act also underscores the State's ongoing obligation to undertake all measures necessary to establish the whereabouts of the victim and prevent the granting of pardon or amnesty to individuals who commit such crimes.

8. The Search Commission, in particular, has the function of supporting the investigation of enforced disappearances by undertaking activities to ensure the success of the investigation and formulating plans for locating disappeared persons, covering also the legal aspects, as well as plans that can be undertaken by concerned individuals and non-governmental organizations (NGOs).

9. It also has the function of assessing plans for locating disappeared persons; supporting the implementation of plans for locating disappeared persons, which involves providing the necessary assistance to the authorities responsible for investigating enforced disappearances, and cooperating with individuals and NGOs that request State authorities or agencies to undertake specific activities to ascertain the circumstances of the enforced disappearance and to find the victim; and establishing working groups for specific cases, which involves selecting civil servants who are members of the Commission to be directly responsible for undertaking any of the activities mentioned above in respect of a particular case.

10. The Government provided information on the strategies developed by the Search Commission in the discharge of its functions, namely, through the regulation and strengthening of inter-institutional coordination, the design of coordination instruments to encourage member entities to meet their obligations or provide the information needed to ascertain the circumstances of the disappearance, and the drafting of guidelines for institutions.

11. These strategies consist in support for criminal and disciplinary proceedings through the design of models for investigation; expert and technical advisory services; liaison between the investigating unit and members of the victim's family to facilitate the collection of evidence that would lead to the location of the disappeared person; support for the development of the National Register of Disappeared Persons, which contains all information used for identifying corpses; and development and submission of a bill governing the Urgent Search Mechanism. Other strategies include the promotion of investigations through training activities that provide information about the functions of the Commission and the scope and interpretation of legal mechanisms, and follow-up and monitoring of plans for locating disappeared persons by keeping itself informed about the general plans

drawn up by the various bodies responsible for investigating the crime of enforced disappearance as well as by concerned individuals and NGOs, which are a source of information for formal investigations.

12. The Government also described several activities undertaken in that field, such as: the creation of a working group to advise the Director-General of the Police about cases of enforced disappearance and the establishment of working groups on preventing, investigating and collecting information on cases of enforced disappearances in regional police units, metropolitan police and police departments at the national level; the preparation of a brochure which will be distributed widely and will contain key concepts relating to the identification and prevention of enforced disappearances in the country; and the launching of a public information campaign and the organization of seminars to raise awareness about the crime of enforced disappearance.

Croatia

13. The Government of Croatia stated that it welcomed the adoption of General Assembly resolution 59/189. Having directly encountered the problem of missing persons, Croatia has been implementing international humanitarian law since 1991, and especially such provisions as stipulated by the Geneva Conventions and the Additional Protocols pertaining to missing persons. Since 1991, Croatia has established and developed institutional mechanisms for dealing with this issue. This resulted in the development of the "Croatian model for tracing missing persons", which included positive experiences of international organizations and countries that had addressed this issue, while considering the geopolitical, cultural and other characteristics of Croatia.

14. The basis for resolving the issue of missing persons in Croatia included the following principles: every person's right to life, liberty and security of person; prohibition of cruel, inhuman or degrading treatment or punishment; and every family's right to know the truth about the fate of their loved ones. The issue of missing persons was also closely related to other priority issues in Croatia, including the return of displaced persons and refugees, the establishment of coexistence as a precondition for normalization of relations in the previously occupied territories, and normalization and improvement of relations with neighbouring States.

15. Out of 18,000 persons registered as detained, missing and forcibly abducted in 1991, 7,666 persons were located, exchanged and released by the Governments or militias holding them. In order to collect all pertinent information, the relevant bodies of Croatia in 1994 renewed requests for searches for missing persons to be undertaken. As a consequence, 3,053 persons, mostly ethnic Croatians and non-Serbs, were registered missing, having been taken away by force. Detailed information on missing persons was collected, including ante-mortem data. This approach for tracing was later adopted by Bosnia and Herzegovina and Serbia and Montenegro, including Kosovo, and was implemented by international institutions as well. Additionally, information was also collected according to the forms supplied by the then United Nations Centre for Human Rights and delivered to the United Nations special process on missing persons in the territory of the former Yugoslavia. The efforts of Croatia resulted in the exhumation of 141 mass graves

and over 1,200 individual graves. Of the remains of 3,573 persons, 2,972 persons were positively identified and their remains returned to the families. Relevant authorities organized burials and reimbursed the expenses for all the identified victims, whose burials took place in accordance with their families' wishes.

16. The Government further stated that, even though the above measures resulted in resolving the fate of most of the missing and detained persons, the fate of 1,149 forcibly abducted missing persons remained unknown. That was the most difficult humanitarian issue to emerge as a result of armed conflict in Croatia. Of 1,149 persons still sought, 51 per cent were civilians, 20 per cent were women, and as many as 29 per cent were elderly. Twelve persons whose fate was still unknown were minors at the time of their disappearance.

17. The issue of missing persons is a priority in the Government's relations with Serbia and Montenegro, which had access to information and documentation on missing persons in Croatia and on whose territory unidentified victims had been buried. However, after a prisoner-of-war exchange in 1992, the then Federal Republic of Yugoslavia (Serbia and Montenegro) suspended the negotiation process on missing persons. Similarly, it refused any cooperation with the United Nations special process on missing persons in the territory of the former Yugoslavia. That was one of the main reasons for the adoption by the Commission on Human Rights of resolution 1995/35, in which the Commission urged the Federal Republic of Yugoslavia to cooperate in tracing missing persons. Having signed bilateral agreements and a protocol on cooperation between commissions on missing persons in 1996, some slow improvement in resolving the issue was made. Most cases of missing persons would be resolved if Serbia and Montenegro's dossiers were opened and information made available. Meanwhile, Croatia has undertaken all measures and activities to resolve the fate of about 200 missing citizens of Serbia and Montenegro who participated in the war against Croatia. During the implementation of the tracing activities, the presence of observers from international organizations and expert observers of interested parties was authorized.

18. The Government stated that, in addition to the cases mentioned, a considerable number of persons, mostly its citizens of Serb ethnicity, disappeared during the liberation of the previously occupied areas of Croatia in 1995. Since Croatia is committed to resolving the fate of all its missing citizens regardless of their origin, ethnicity, religion or any other affiliation, information concerning 867 missing persons from that time was collected at its initiative and in cooperation with ICRC. Following the identical approach to resolving the fate of missing persons, 499 persons were exhumed, of whom 292 were positively identified and returned to their families. Burial according to the families' wishes was ensured for all identified persons.

19. The system for tracing was complemented by outstanding care for the families of missing and forcibly abducted persons. All families of missing persons, regardless of their origin, ethnicity, religion or any other affiliation, including the circumstances of the disappearance, were encouraged to file tracing requests with relevant governmental bodies, in accordance with the highest standards of ICRC and the Commission on Human Rights. Families were continually informed of the tracing process through direct individual contact, cooperation with relevant NGOs and by public statements. Once the fate of a missing person had been confirmed, the tracing process was closed, with the approval of the family. In addition,

psychological and social care were made available to family members and they were granted, through legislation, special status rights.

20. Since 1991, Croatia has cooperated with international organizations whose mandate concerns the issue of missing persons. Since the establishment of its Office in Croatia in 1991, ICRC has been able to fully implement its mandate on Croatian territory. During the war years, intensive cooperation between the Government and ICRC took place on the issue of missing persons. By accepting the standards of ICRC, Croatia confirmed its acceptance of respect for, and implementation of, humanitarian principles concerning the issue of missing persons. A joint project of the Government and ICRC concerning the collection of ante-mortem and other types of data relevant for the tracing process was successfully completed. Other projects currently under way include the establishment of a system for, and operational cooperation in, the organization of identification processes and the burial of remains. Additionally, Croatia has cooperated with other international organizations, including the International Commission on Missing Persons in Bosnia and Herzegovina.

Cyprus

21. The Government of Cyprus, with reference to persons missing in Cyprus as a result of the 1974 invasion and military occupation by Turkey of part of the territory of Cyprus, noted that military personnel and reservists, as well as civilians, including women and children, were captured by the armed forces during July and August 1974 and have since disappeared. Others disappeared after the cessation of hostilities, in areas under the control of the Turkish army. Some were listed as prisoners of war (POWs) by ICRC and were included in the list of POWs transferred to mainland Turkey, but since then their fate remains unknown.

22. The Government also noted that several resolutions of the General Assembly, the Commission on Human Rights and the Security Council have addressed the issue of missing persons in Cyprus, confirming the basic need of the families to be informed of the fate of their loved ones. The Government also referred to resolutions or judgements taken on this issue of the European Parliament, the European Court of Human Rights and the Committee of Ministers of the Council of Europe, in particular the interim resolution adopted on 7 June 2005 by the Committee of Ministers of the Council of Europe concerning the judgement of the European Court of Human Rights of 10 May 2001 in the Fourth Interstate Appeal of Cyprus against Turkey. The resolution required effective measures to be taken by Turkey to deal with the tragically unsolved humanitarian problem of missing persons, notably in achieving concrete results in respect of effective investigations into their fate.

Guatemala

23. The Government of Guatemala noted the establishment in May 2006 of the Commission on the Search for Persons Who Disappeared during the Internal Armed Conflict. The purpose of the Commission is to coordinate the work of its members and their interaction with other State bodies and institutions and with civil society organizations in order to establish mechanisms for tracing, investigating and

determining the whereabouts of persons subjected to forced or involuntary disappearance during the internal armed conflict. The Commission's main tasks are to submit for the approval of the President a national plan to search for persons who disappeared during the internal armed conflict and to prepare and make proposals for the establishment of a national office to search for those persons.

24. This initiative was preceded in 2001 by the setting up of a national commission, under the aegis of the Office of the Human Rights Prosecutor, to search for children who disappeared during the internal armed conflict, and also by other initiatives taken by human rights NGOs such as the Forensic Anthropology Foundation, which carried out a number of exhumations that have made it possible to identify persons who disappeared during the internal armed conflict.

Jordan

25. The Government of Jordan stated that investigations and tracing operations concerning missing persons in Jordan are carried out through the Police Departments in the Directorate of General Security, according to their areas of specialization. In the cases where departure from Jordanian territory has been established, the Interpol secretariat and the Arab Office for Criminal Police are duly informed so that they may issue the "International Yellow Forms" to disseminate the relevant information on the missing or disappeared persons. Jordan also deals the same way with international requests addressed to it about similar cases of disappearance.

Mauritius

26. The Government of Mauritius reported that the issue of missing persons in the context of General Assembly resolution 59/189 is not applicable to Mauritius as the country does not have any armed forces and there is no armed conflict in the territory, nor has any person been reported missing in connection with an international armed conflict.

Mexico

27. The Government of Mexico stated that the issue of missing persons in the context of armed conflict is not applicable as there is no armed conflict in the territory.

28. However, the Government noted that the Department for Crime Prevention and Community Services of the Office of the Attorney-General of the Republic ran a social support programme for relatives of missing or abducted persons, which consisted of the dissemination at the national level of flyers containing a photograph and the physical description of the missing person. A comprehensive care system was also implemented. The system provided multidisciplinary support in the areas of legal assistance, social work and psychological support with a view to helping family and friends to cope with the absence of the loved one. This programme liaised with the Office of the Assistant Attorney-General for Organized Crime Investigation, the Federal Investigation Agency, Interpol Mexico and the Office of

the Assistant Attorney-General for Human Rights, Victim Care and Community Services. There is a coordinating office for missing or abducted minors. The Government has also supported the National Human Rights Commission in its programme on persons presumed missing.

Tunisia

29. The Government stated that the phenomenon of suspicious or forced disappearances does not exist in Tunisia. The Tunisian approach to human rights is rooted in the principles and norms of international humanitarian law, in particular the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977, the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In adhering to international norms, Tunisia has adopted a broad strategy to combat the scourge of missing persons through the elaboration of a human rights policy in the justice, security and law enforcement sectors, as well as through the adoption of legislation which conforms to international standards, notably those regulating police custody, remand and prison systems, and the prohibition of torture and other cruel, inhuman or degrading treatment.

Venezuela (Bolivarian Republic of)

30. The Government of the Bolivarian Republic of Venezuela stated that General Assembly resolution 59/189 principally addresses cases of disappearance in States in a situation of armed conflict and as Venezuela is not in such a situation, the assumptions made in the resolution with a view to its possible implementation do not apply. With respect to persons missing as a result of ordinary offences, the Government referred to the activities of the Homicide Investigation Division, under the supervision of the Scientific, Criminal and Criminological Investigation Unit, and its Department of Investigations into Crimes against Human Life and Psychological and Physical Integrity, which is mandated to investigate offences against the person in the form of violent death. The Department also has a Special Victims Unit, whose function is to locate missing persons and deal with complaints of death threats, by taking all the necessary steps to prevent the commission of any crimes against such persons.

III. Reply received from the International Committee of the Red Cross

31. ICRC stated that it has continued its activities aimed at addressing the issue of people who go missing as a result of armed conflict or internal violence and the plight of their relatives.

32. In line with the objectives clearly set out in the Agenda for Humanitarian Action adopted at the 28th International Conference of the Red Cross and Red Crescent, ICRC reinforces its traditional activities in this field whenever necessary by taking into account recommendations and best practices. Main areas of work include, as in the previous year (see E/CN.4/2006/68): the promotion and development of law aiming at preventing enforced disappearance; cooperation with

armed forces and regional military organizations in order to ensure, for instance, that military personnel wear some form of personal identification and can regularly exchange news with their families, and that human remains and information on the deceased are properly handled on the battlefield; strengthening the capacity of the Red Cross and Red Crescent Family News Network; development and promotion of guidelines and standards of best practices for the management of human remains and forensic human identification as well as on the specific needs of the families of missing persons and how these needs can be met.

33. In doing so, ICRC, throughout the period under review, raised the issue of missing persons and their families in international and regional organisations, with the aim of getting these organizations to encourage their members to adopt appropriate legislation.

34. For example, ICRC is currently raising awareness of international humanitarian law (IHL) issues among the representatives of the Interparliamentary Assembly of the Commonwealth of Independent States (CIS), and is encouraging them to adopt recommendations and draft model laws on the promotion and implementation of IHL. ICRC has produced a draft law on missing persons and an explanatory note to go with it, and presented these to the Commission on Human Rights and Social Policy of the Interparliamentary Assembly of CIS in March 2006.

35. ICRC has continued its awareness-raising within the Organization of American States (OAS) and supported a second resolution on missing persons, which was put on the agenda of the thirty-sixth session of the OAS General Assembly by Peru, Argentina and Colombia which was adopted in June 2006 (AG/RES. 2231).

36. ICRC conducts and supports studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons, comparing domestic law with international law and establishing plans of action. Such studies have been carried out in Armenia, Azerbaijan, Georgia, Guatemala, Indonesia and Sri Lanka, and are under consideration in Argentina, Brazil, Chile and Peru.

37. Information on existing national laws relating to missing persons and enforced disappearance are continually being added to the ICRC database on national measures for the implementation of international humanitarian law (www.icrc.org/ihl-nat).

38. ICRC and the Belgium Inter-departmental Commission for International Humanitarian Law plan to organize a workshop in Brussels on 25 and 26 September 2006 in order to encourage European Governments to step up their efforts and increase their commitment with regard to the establishment of national mechanisms and the adoption of legal measures intended to address the problem of missing persons.

39. As part of its efforts to help detainees, ICRC has continued to strive to prevent or put an end to cases of enforced disappearance and endeavoured to ensure that detainees can maintain contact with their families and benefit from the procedural and judicial guarantees to which they are entitled under IHL and other bodies of law. In 2005, ICRC had access to some 530,000 people deprived of their freedom in over 80 countries, of whom some 47,000 were individually monitored and registered.

40. ICRC carried out a survey in more than 40 countries on how armed and security forces handled issues such as communication between troops and their

families, means of personal identification for troops on the battlefield and the handling of human remains in combat situations. On the basis of this survey, ICRC produced an information and training kit designed to help improve these practices where needed.

41. ICRC continued to help maintain and restore contact between family members through the worldwide Red Cross and Red Crescent Family Links Network. In 2005, 505,748 Red Cross messages were collected and 453,727 distributed, the Internet was used to trace people via the ICRC Family Links website, and 6,780 satellite/mobile phones were provided to those who have the telephone number of a relative. With the consent of those concerned, lists of people either providing news or looking for news from relatives have been published on paper and on the ICRC website (337,862 in 2005), and broadcasted on radio or TV.

42. The organization also makes confidential representations to the authorities and to leaders to obtain information and clarify the fate of the missing person. In this respect, ICRC maintained a constant dialogue with authorities in many places around the world, such as Angola, Armenia, Azerbaijan, the Balkans, Chechnya, Ethiopia, Eritrea, Georgia, Iraq, Nepal, Sri Lanka and Western Sahara.

43. Where appropriate, ICRC continued to promote the establishment of national and multilateral mechanisms involving all the former parties to the conflict — and potentially other bodies — working together, in accordance with agreed procedures, towards a common objective concerning missing persons and their families. In particular, ICRC provided as much support as possible to mechanisms whose objectives include clarifying the fate of missing persons and support for their families, for example in Timor-Leste, Bosnia and Herzegovina and Iraq. It participated in — or even chairs — special mechanisms, such as the working group on missing persons in Kosovo, which helped to establish the fate of a number of missing persons and to return their remains to their families.

44. ICRC also continued to encourage and support the establishment by the States of National Information Bureaus and Grave Registration Services. An assessment of existing mechanisms in selected countries is currently under way.

45. To support States and others to fulfil their obligations under international humanitarian law to ensure the proper and dignified management of the dead and to help clarify the fate of missing persons, ICRC forensic experts continued to be engaged in needs assessments and operational support for ICRC field activities related to human remains and forensic science; development and dissemination of ICRC guidelines; and training and networking with forensic experts and institutions worldwide. In addition to the experts at headquarters, a regional forensic adviser based in Tbilisi was recently recruited to provide technical support in Georgia, Armenia, Azerbaijan, the Russian Federation and the Balkans. In this regard, a mission to Lima by the ICRC Forensic Adviser was organized from 26 February to 8 March 2006 in response to a request from the Equipo Peruano de Antropologia Forense for technical assistance (analysis and assessment of its various databases), in the framework of the ICRC-supported project *Memoria de los Desapparecidos*. The project aims at collecting ante-mortem data to preserve them for future investigations. ICRC recently provided the Committee on Missing Persons in Cyprus with technical forensic advice to help in its efforts to ensure the most appropriate and cost-effective project for exhumations and identifications, and in particular advice for its Programme for Exhumations and Identifications.

46. Other activities in this regard included the design and implementation of a long-term strategy for investigations into cases of missing persons in the Southern Caucasus; support and training, at the request of the Pakistani authorities, leading to improved disaster victim identification on the part of authorities and organizations involved in disaster response; and the support and training for Iraqi forensic organizations and practitioners to help them improve the management and identification of bodies.

47. Dissemination of ICRC standards and guidelines on forensic sciences and human remains for specialists and non-specialists has continued to be carried out for ICRC staff, the Red Cross/Red Crescent Movement and external stakeholders. In addition to last year's publications, ICRC published a legal, ethical and practical guide relating to the use of DNA and the identification of human remains in contexts of armed conflict or internal violence at the end of 2005. The lessons learned from the 2004 tsunami and other major natural disasters in 2005 prompted ICRC to join forces with the World Health Organization, the Pan American Health Organization and the International Federation of Red Cross and Red Crescent Societies, resulting in a manual entitled *Management of Dead Bodies after Disasters: A Field Manual for First Responders*, which was published in 2006 and widely distributed by the organizations involved. Both publications are available on the ICRC website.

48. ICRC experts also actively helped to build up knowledge, skills and expertise in the field of human remains management and forensic identification, both within the Movement and outside the institution. In Sri Lanka, in December 2005, an ICRC forensic anthropologist conducted two workshops for senior police and army officers on the recovery and treatment of human remains.

49. In addition, ICRC experts contributed to developing and strengthening a professional network of local, regional and international forensic institutions, associations and practitioners worldwide, in order to better meet growing needs and demands for forensic expertise in efforts to deal with the problem of missing persons. In October 2005, ICRC supported and helped organize a meeting in Bogotá between representatives of the Forensic Anthropology Society of Europe and the Latin American Association of Forensic Anthropology, to promote cooperation on research and training on forensic investigations into issues relating to missing persons.

50. Finally, ICRC helped some families of missing persons to cope with the consequences of the particularly distressing experience they have suffered ("complicated mourning"). In Kosovo, ICRC held training seminars to help family associations support their members. Through contracted consultants, for example, ICRC provided psychological support to 158 relatives of missing persons through projects in 2005 and four additional projects for 56 members in the first half of 2006.